

Congress of the United States
Washington, DC 20515

June 6, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

The Honorable John M. McHugh
Secretary
Department of the Army
The Pentagon, Room 3E700
Washington, DC 20310

Dear Administrator McCarthy and Secretary McHugh,

We are concerned about the impact of the recently proposed rule from the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) to expand Clean Water Act (CWA) authority and make changes to the “Waters of the U.S.” (WOTUS) *definition*. If finalized, the rule would declare all hydrological connections “significant” without applying the case-by-case test traditionally administered by EPA and the Corps in conjunction with state and local authorities. These changes to the rule would significantly expand federal control of land and water resources across the Nation, triggering substantial additional permitting and regulatory requirements.

The provisions to include isolated wetlands under Clean Water Act jurisdiction may yield unintended yet damaging consequences to job growth in the real estate, construction, agriculture, transportation, and energy sectors. New challenges would emerge in the form of major project permitting delays, costly resource outlays for new permit applications, and regulatory uncertainty in the administration of Corps permitting programs. We worry the impact will be felt by the entire regulated community and by average Americans, including small landowners and small businesses least able to absorb additional costs.

Upon the release of the proposed rule, the agencies emphasized that the scope of CWA jurisdiction was narrower under the proposed rule than that under the existing regulations, and that the proposed rule did not establish jurisdiction over any new types of waters. But a closer reading suggests that the proposed rule provides virtually no limit to CWA federal jurisdiction. Instead, the proposal establishes broader definitions of existing regulatory categories, fails to define key terms, and regulates new areas that are not jurisdictional under current regulations. Such vague definitions and concepts will not provide the intended regulatory certainty and will likely result in increased litigation.

The scientific report conducted by the agencies to justify the proposed rule states that all waters require federal protection, regardless of size or significance in connectivity. That conclusion seems to disregard the “significant nexus” test described by Justice Kennedy’s concurrence in the Rapanos decision. In Rapanos, and the SWANCC decision that preceded it, the Supreme Court made clear that there is a limit to federal jurisdiction under the CWA,

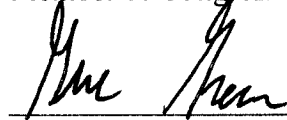
specifically rejecting the notion that any hydrological connection is a sufficient basis to trump state jurisdiction. Therefore, this rule should rely upon new data to quantify "significant nexus" in order to ensure that it does not extend jurisdiction to waters that have a "de minimis" connection to jurisdictional waters.

We believe that this rule should protect our environment without unduly burdening businesses and provide regulatory certainty to affected industries. We look forward to continuing to work with you to find that balance.

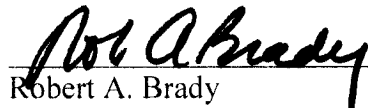
Sincerely,



John Barrow
Member of Congress



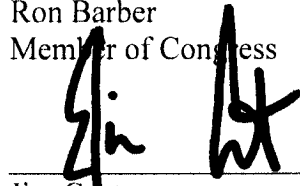
Gene Green
Member of Congress



Robert A. Brady
Member of Congress



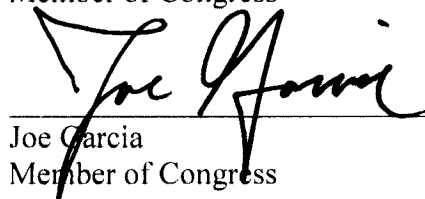
Ron Barber
Member of Congress



Jim Costa
Member of Congress



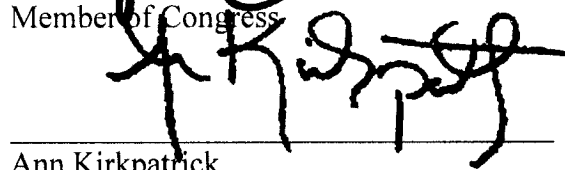
Collin C. Peterson
Member of Congress



Joe Garcia
Member of Congress



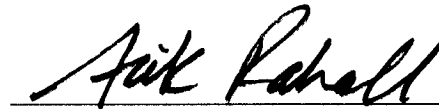
Kyrsten Sinema
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Ann Kirkpatrick
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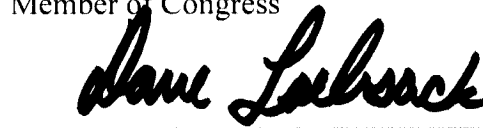
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